

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Alveto Rivera,

Case No. 22-cv-1129 (KMM/BRT)

Plaintiff,

v.

ORDER

State of Minnesota,

Defendant.

This matter is before the Court on Plaintiff Alveto Rivera’s applications to proceed *in forma pauperis* (“IFP”) on appeal. [ECF No. 11, 15]. On September 19, 2022, the Court adopted the Report and Recommendation of Magistrate Judge Becky R. Thorson and dismissed this case without prejudice. [ECF No. 8]. Mr. Rivera seeks to appeal that dismissal and to do so without paying the \$500 appellate filing fee. Mr. Rivera has submitted a certified copy of his prison trust account statement in connection with his IFP applications. [ECF No. 15].

Under 28 U.S.C. § 1915, this Court may authorize a party to proceed without prepayment of fees, costs, or security, on the affidavit of the party testifying that he is unable to pay such costs, describing the nature of the appeal and his belief that he is entitled to redress. According to this statute, which is part of the Prison Litigation Reform Act of 1995 (“PLRA”), prisoners who are granted IFP status are not excused from paying the court filing fee altogether, as is the case for non-prisoner IFP litigants. Instead, a prisoner who is granted IFP status is merely granted permission to pay the filing fee in

installments, rather than paying the entire amount in advance. *Ashley v. Dilworth*, 147 F.3d 715, 716 (8th Cir. 1998) (“The purpose of the [PLRA] was to require all prisoner-litigants to pay filing fees in full, with the only issue being whether the inmate pays the entire filing fee at the initiation of the proceeding or in installments over a period of time.”).

Based on a review of Mr. Rivera’s filings, he is entitled to IFP status on appeal. However, to pursue the appeal, he must first pay an initial partial appellate filing fee of \$156.82. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). This fee represents 20% of the average monthly deposits in Mr. Rivera’s trust account over the six-month period preceding the filing of his notice of appeal. *See* 28 U.S.C. § 1915(b)(1)(A); [ECF No. 15-1 at 1]. The remainder of the filing fee shall be paid in monthly installments as set forth in § 1915(b)(2).

Accordingly, **IT IS HEREBY ORDERED that:**

1. Plaintiff’s Applications to proceed IFP on Appeal [ECF No. 11, 15] are **GRANTED**; and
2. Plaintiff is required to pay an initial partial appellate filing fee of \$156.82.

Date: November 14, 2022

s/ Katherine M. Menendez

Katherine M. Menendez
United States District Judge